IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 1133-SB of 1999

Date of Decision: December 12, 2007

Prem Singh @ Prema Nand Giri

Appellant

VERSUS

State of Haryana

Respondent

CORAM: HON'BLE MR.JUSTICE RANJIT SINGH

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.P.C.Chaudhary, Advocate,
for the appellant.

Mr.Yashwinder Singh, AAG, Haryana.

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RANJIT SINGH J.

This is that unfortunate case where daughter has made an allegation of rape against her own father. The trial Court viewed that the prosecution succeeded in proving this grave allegation against the appellant and hence sentenced him to suffer 10 years R.I. and to pay a fine of Rs.2,000/-. In default of payment of fine he

was to undergo further imprisonment of six months R.I.

The appellant is in custody and has rightly not been shown any leniency. The case would not call for show of any leniency. Such like offence, even when committed in respect of any woman, is viewed unexceptionable misconduct and condemnable one. It is an offence which not only violates the person of a woman. but leaves some permanent scars which are not easy to heal. The effect of such violation of the person of a young girl and that too by her protector is bound to be much more devastating. Further unfortunate it is to notice that the victim was less than 16 years of age. What this girl would have undergone perhaps can not be gathered in words. While hearing the case, I shared my concern with the counsel about the unusual nature of the allegation and the stigma entailed in it. As such, I told the counsel to do full justice to the case as if by any chance, the appellant is innocent then he must not be made to live with this stigma. Of course he may not deserve any sympathy the allegation being so grave and totally unacceptable to any civilized society. I have myself scrutinised the evidence minutely to see if the offence alleged is established or not. I would not be able to take any different view than the one taken by the trial Court. Verdict is same by me as well.

Arti, a young girl below 16 years of age, lodged this FIR on 1.2.1999 by making a statement before SHO Desh Bandhu, Police Station ,City Thanesar. She alleges that her mother usha Devi had gone to Ambala on 25.1.1999 to bring some money. Her another sister Pooja had accompanied the mother. The complainant's brother had gone to her maternal grand mother who

was staying at Radaur. At about 8.00 P.M. the complainant was lying in a bed as she was having fever. The appellant came there at about 9.00 P.M. He gave some tablets to his daughter and took tea. Around 11.00 P.M. the appellant got into the quilt of the prosecutrix. The appellant asked her to undress but she refused. Defying all norms of decency, the appellant removed salwar of his own daughter and allegedly forcibly committed sexual intercourse with her against her wish. Oh! what to say. One would not find words to condemn or to describe it. Prosecutrix raised alarm. It being odd hours at night, no one came to her rescue. Still the appellant gagged her mouth to stop her from raising noise and threatened her to kill in case she disclosed this episode to any one. Usha Devi, mother of the prosecutrix and wife of the appellant, returned on 26.1.1999. The prosecutrix, narrated the entire occurrence to her mother. Her shock can well be understood. She was seen weeping inconsolably. Mother took her daughter (the prosecutrix) and left her with her sister at Ambala on the next day . She ultimately returned on 31.1.1999 to make a complaint about this incident, on 1.2.1999. The prosecutrix, accompanied by her mother made a complaint to SHO and that is how the FIR Ex.PK/2 was recorded. The girl was referred to LNJP hospital, Kurukshetra for complete medical examination. The evidence shows that the prosecutrix ran out of the room when Dr. Suman and Dr. Saini asked her to lie down for local and vaginal examination. The doctor thus endorsed that the complete examination could not be done. The prosecutrix, however, has a different story to narrate in this regard. She would say that she started bleeding profusely during examination and the matter got

further aggravated when Dr.Saini slapped and rebuked her when her foot had touched the doctor. Further examination thus became difficult. Statement of the prosecutrix under Section 164 Cr.P.C. was also recorded on 2.2.1999. She desired to be medically examined at Ambala and so on 4.2.1999 order Ex.PJ/2 was passed by CJM Kurukshetra, on an application Ex.PJ/1 in this regard. She was, accordingly, examined by Dr.Veenu Sethi and Archana Jindal at Ambala. The result of the medical examination was as follows:-

> "There was no external mark of injury on her body. Secondary sex characters were found well developed. Axillary and public hair were scanty. Age of menarche was three years back. There was congestion in and around external genitalia. While foul smelling discharge was coming out of vagina. Vaginal swab was taken. Per vaginal examination could be done with difficulty. There was vaginal tenderness. Vagina admitted tip of the finger with difficulty. Hymen was partially torn and congestion was present. No carunculae mytiformis was seen."

On the basis of above noted observation/finding, it was opined that possibility of the prosecutrix being subjected to sexual intercourse, could not be ruled out. Other formalities in regard to investigation were also completed and the appellant was taken into custody. He was also subjected to medical examination on 5.2.1999. It was found that there was nothing to indicate that the appellant was unable to perform the act alleged against him.

The appellant did not dispute relationship with the

complainant and also the fact that Usha Devi is his wife. He, however, denied all the incriminating circumstances appearing in the evidence against him. According to the appellant he had renounced the world due to bad character of his daughter and wife as he found them involved with the tractor mechanic Mohinder Singh. The appellant further maintains that he had given hit with lathi to his daughter and wife and thereafter, Mohinder Singh had beaten him as a result of which, he had his three teeth broken. The appellant further pleads the present case has been planted on him with the help of husband of Usha Devi's sister, who is an advocate at Ambala. Since the prosecutrix had lived with the mother she is making this false allegation at her instance. Usha Devi, according to the appellant, wanted the prosecutrix to marry Prem Chand which was resisted by the appellant and that is how the present case was made against him. In his support, he produced Prem Chand as DW-1 and Gurdev Singh Saini as DW-2. He also examined DSP Anil Dhawan (DW-3), who had conducted inquiry into the complaint made by the appellant on the directions of learned Sessions Judge, Kurukshetra. Ashok Kumar was examined as (DW-4) and Som Pal as (DW-5) in defence.

DW-1 gave evidence to the effect that he had married the prosecutrix but could not disclose the date of said marriage. He further disclosed that after marriage the prosecutrix had lived with him 4 to 5 months but now had left him and had re-married one Dheera of village Pabnawa. DW1 also confirmed the fact that after 3 to 4 months of the marriage he learnt that Usha Devi was of a bad character. He claimed to have accompanied prosecutrix and her

mother to S.P.Kurukshetra. DW-2 has given evidence in regard to the affidavits of prosecutrix and her mother, which were got attested and the entries, which were made in this regard by him, concerning the marriage of the prosecutrix with Prem Chand (DW-1). DW-4 is a witness to the quarrel in which he broke appellant's teeth. Som Pal (DW-5), husband of the appellant's sister had filed a petition leading to summoning of the wife of the appellant who was respondent therein. In fact, the petition was filed for seeking custody of prosecutrix from one Prem Chand (DW-1) . DW-5 has also given evidence in regard to loose character of Usha Devi and that she did not have cordial relations with her husband. Som Pal (Dw-5) has also given some evidence regarding the fight that took place between the appellant and his wife , as a result of which he had given beating to the wife. Taking support from all these facts, plea is that the appellant has been falsely accused of this unimaginable stigmatic conduct.

Complainant-prosecutrix was examined as PW-9 in this case. She was proved to be aged less than 15 years. Her date of birth is 18.5.1984. She has given clear and categorical evidence in regard to what all happened to her on 25.1.1999. She has deposed on the lines as noticed above while recapitulating prosecution story in detail. While under cross-examination she denied if she was married to Prem Kumar son of Ram Sarup Tarkhan or that affidavit in this regard was sworn by her or her mother. She otherwise agreed that she had signed the register maintained by Gurdev Singh, Advocate but explained that this was done thinking that the signatures were obtained concerning the present case. She otherwise conceded that

the appellant had renounced the world about six years ago. But according to her, the appellant used to give them money for maintenance purpose. She denied the suggestion if she was residing with Dheeru. Though she agreed to have known Ram Kali, being sister of her father, but denied knowledge if any case was instituted against her mother at Karnal. The prosecutrix was living at Rajpura with her uncle and denied the suggestion that she had falsely deposed at the instance of Prem Kumar. The suggestion put to her by the defence that the appellant was opposed to her marriage with Prem Kumar and that she had lodged this false report etc. were denied. Similarly, Usha Devi(PW-10) would lend a total support to the prosecution case. After disclosing that she had gone to get some money from her sister, PW-10 states that when she returned the prosecutrix starting weeping and disclosed to her what all had happened to her (prosecutrix) during the previous night. PW-10 had brought the complainant to Ambala. She has then deposed about the manner in which the report in this regard was lodged and other aspects of the case concerning the investigation. PW-10 was questioned in detail about the fight that used to take place between her and appellant. PW-10 did not make any attempt to hide any thing in this regard. She admitted that the appellant had injured her head and that of prosecutrix thinking that they had gone to meet some one, whereas, she and her daughter had gone to get medicine from a doctor. She also agreed that the appellant used to suspect her character and also that of the prosecutrix. She, however, denied the suggestion that these quarrels were on account of this suspicion. Otherwise she denied that she had married the prosecutrix with

Prem Kumar on 1.2.1999. She even said that she did not know him. She also denied knowledge about any case that might have been instituted by Ram Kali. She further denied this fact that she wanted to marry the prosecutrix with Prem Kumar, which was an inter-caste marriage. The other suggestion that this case was falsely registered because of the fact that PW-10 was keen to marry the prosecutrix with Prem Kumar, was also denied. The case is further supported by the police officials, who investigated the same.

False implication by a daughter against her father, which is supported by mother, who is wife of the appellant, is difficult to imagine under normal circumstances. There is nothing emerging from the record of this case to give any indication in regard to false implication. Both mother and daughter have given very clear and unambiguous evidence. Except for saying that the appellant is falsely implicated as he was objecting to they being of loose character or that marriage of the prosecutrix with Prem Kumar etc. the appellant has done nothing to prove so or his assertion. To my mind it would not appear logical to think so. Why would a lady make such allegations that too falsely putting the honour of her daughter at stake? Would any mother do so against her own husband falsely? It cannnotbe expected. It is not usual, normal or natural. Own case set up by the appellant is that he had renounced the world. How and in what context then he was getting concerned about his family is not explained in any manner. He is also seen to be changing his stand a bit in regard to his false implication. At one stage he has urged that he objected to the girl as well as the wife being of a loose character, which led to his false implication. At the same time he has

also contended that his wife was wanting the prosecutrix, their daughter, to marry a person, which was objected by the appellant, leading to his false implication. It is difficult to imagine that in a society like ours a lady or a daughter would go to the extent of making allegation against husband/father for the reasons as are being urged. It cannot be expected that the daughter of the tender age, being less than 15 years, would stand up to make allegation to frame her own father for such a heinous misconduct at the asking of her mother. In a way the wife of the appellant is seen to be giving a forthright account. She did not choose to deny or contest the suggestion given by the defence that she was given beatings even to the extent of breaking of head. She also did not deny the suggestion that the appellant used to suspect her of being a loose character and that he used to fight with her. If she had any intention to falsely implicate the appellant because of these reasons, she could not be expected to be so forthright in conceding these suggestions while under cross-examination. She did not hide this aspect which indicates that she chose to take the appellant head on and has come out with the fair and accurate account of the events. Otherwise nothing substantial is seen or pointed out either from the cross-examination or otherwise which would go to prove the defence taken up by the appellant. The case of the prosecution in regard to the alleged misconduct is well supported by the evidence of a victim herself. The same is receiving support from the medical evidence. The delay in lodging the report, considering the facts and circumstances of the case, would not have any material effect in this case. One can imagine the trauma this girl and the mother have

undergone. It would require real courage to stand up and make allegations which were not against any stranger but against husband/father. I have not been able to find any material or evidence which would indicate that the case against the appellant is a frame up. The defence evidence would not inspire that confidence to show that it is a case of false implication. DW-1, who states to have married prosecutrix, further states to have lived with her for 4/5 months. He even could not give the date of his marriage. Why would he appear to support the defence is not made clear. What advantage it would give to the defence is also not clear. If the prosecutrix had remained married and was still living with some person than that would have found reflection in the medical examination. Normally the married lady would have had different condition on her vaginal examination. DW-1 is not a witness who can be given any credit for his deposition. He seems to be earlier helping the ladies but have now come in support of defence. This evidence appears to have been introduced to meet the medical evidence supporting the allegation of sexual intercourse made by the prosecutrix but would not help the cause of defence as per the detailed reasons noted above. Accordingly, I am not inclined to accept the theory as projected by the defence and rather find that the case of the prosecution is well proved and well established.

The appeal accordingly is dismissed.

(RANJIT SINGH)
JUDGE

December 12, 2007
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